A Framework Convention on Global Health: Securing The Right to Health and Advancing Health Equity

Legal Experts Meeting Report

Kampala – September 2013

Centre for Health, Human rights and Development, with support from Joint Action and Learning initiative on Global Health (JALI), convened a consultative meeting of Legal Experts in Uganda.
INTRODUCTION

The Millennium Development Goals (MDGs) set by the global community in 2000 to improve health are due to expire in 2015, but health inequities still persist within and across countries. Parts of the world continue to experience high levels of mortality and morbidity from preventable diseases as well as from lack of access to essential health care and medicines due to health systems that are non-functional, weak or lack accountability; policies that go unimplemented; communities that have little ability to influence health policy and claim their right to health, programming and implementation; absence of avenues for redress when health rights are violated; or due to blatant lack of knowledge/awareness by ordinary people of their right to health.

Discussions on catalyzing a new era in global health has focused on the formulation of a binding Framework Convention on Global Health (FCGH), grounded in the right to health and aimed at resolving the vast health inequities between and within countries. This treaty is envisioned to create norms to ensure the universal conditions required for good health, along with additional proven policies to reduce inequities, an enabling global environment – from sufficient financing to health-promoting trade and investment rules and people empowered to claim their health rights.

It is anticipated that a FCGH would work towards catalyzing changes in law, policy, and practice, at national and international levels to engender global health with justice. An FCGH would, among others, establish guidelines for ensuring universality of conditions required for good health; clarify the right to health obligations; empower people to claim and enforce the right to health, build the capacities required to achieve this right, and ensure immediate and effective enforceability of the right to health; and enhance the right to health accountability at local, national, and global levels, including through a robusttitself.

Under a FCGH, countries would establish standards and timelines to secure these fundamental human needs for all their people, backed by domestic funding and the necessary international financing and capacity development. This convention would insist that health – and health equity – be a priority in all of these areas, a central consideration that governments must take into account in all activities that could affect health, with the treaty setting standards and requiring strategies that would elevate health throughout government policy. All of this will not be enough if poverty, gender, and the many other sources of marginalization are not tackled directly.
Center for Health, Human Rights and Development (CEHURD), with support from Joint Action and Learning Initiative on Global Health (JALI), convened a consultative meeting of legal experts in Uganda to discuss their views on an FCGH in terms of its necessity as an addition to existing conventions on global health, what their input or role would be in the campaign for such a framework, and its implications. The meeting was held at Seascallop Restaurant in Kampala, 27 September 2013.

MEETING OBJECTIVES AND SCOPE

The meeting was a lunch-gathering of lawyers with expertise in health and human rights in Uganda. The meeting convened to discuss issues and questions that may arise in the campaign for an FCGH; how meeting participants may contribute towards the campaign for an FCGH; how the FCGH would respond to existing challenges; and how the FCGH may be designed to ensure that it incorporates and supports – rather than overriding – local knowledge, priorities, accountability, and owner-

OPENING REMARKS

Ms Juliana Nantaba from CEHURD introduced the FCGH concept and informed the meeting that the FCGH campaign involves partners across the world, including CEHURD. In Uganda, the campaign has already engaged UNAIDS and other UN agencies. The campaign is in the process of identifying actors who may contribute to the development of the framework convention, particularly its content and scope.

Ms Nantaba said the FCGH campaign acknowledges the existing conventions, such as the International Convention on Social, Economic and Cultural Rights (ICSECR), and also that different countries are at different stages of realization of the right to health and that while some have achieved universal coverage, others, such as Uganda, do not have the right to health expressly stated in the national constitution.

She asked the meeting to focus the discussion on what a framework convention covering universal access, the right to health, social determinants of health and related issues, would mean for health funding, its relevance in the Ugandan context, and what the contribution of national level organizations would be. Ms Nantaba outlined the objectives of the meeting and invited the meeting participants to share their views on what the scope of global framework convention should be and how it could close some of the existing gaps.

GENERAL DISCUSSION

The discussion was moderated by Ms Nantaba, and the following were the highlights from the general discussion.

The need for an FCGH

There are international conventions already in place that spell out the right to health, and the fact that Uganda subscribes to these conventions, it does not matter whether the right is expressly stated in the national constitution or not.

It was suggested that there is need to develop a “sound economic argument” or a compelling advocacy message for the FCTC so it the idea can be bought by key stakeholders and power brokers at the national and international levels. Participants noted that governments are now wary of international treaties and agreements, particularly treaties that have resource implications, because they are reluctant to take on new obligations in the midst of tightening economic times.

Some participants were of the view that efforts should focused on implementing existing frameworks both at the national and international levels before creating new ones.
**Accountability and enforcement mechanisms**

The issue of enforcement of obligations was a major concern for the meeting participants. The discussion noted that Uganda is notorious for not respecting its international obligations, such as the requirement to allocate at least 15% of the national budget set by the Abuja Declaration of 2001. For this reason, there are fears that even if the framework convention was developed and adopted, there may not be recourse in case Uganda did not comply. There was the question of who would hold the states accountable for the FCGH’s “binding commitments”. The participants wondered whether compliance would be achieved through design of the FCGH or through the enforcement mechanisms that would come with it. The issue was how an effective enforcement mechanism would look like, given that enforcement of existing international agreements, including sanctions, have limited effectiveness.

The meeting moderator said one of the options is to empower communities to hold government accountable, while at the international level an agency also demands accountability from states that do not fulfill their obligations. She asked the meeting to suggest ways in which these or other proposals could be framed, for instance through setting indicators or benchmarks.

In response, one participant said indicators were important if government and service providers are to be held accountable. They added however, that the country has all the necessary indicators within the existing policy framework, particularly indicators that stipulate minimum standards, that can be used to hold government accountable.

One participant noted that each of the existing convention or treaty has a set of compliance measures. The participant suggested that the FCGH should put in place elevated compliance measures while also bringing together the measures that are scattered in different treaties and conventions. Such measures should include penalties for non-compliance and also national processes, including specification of court procedures. Another participant however, preferred that accountability measures need to be “home-grown” as donors have not been effective in demanding accountability even for the resources they provide LDCs. The FCGH needs to support this by prescribing minimum in-country accountability measures.

The participants further suggested that there should be different levels of compliance to monitor progressive realization of the right to health. Therefore, the FCGH should make it possible to grade compliance by setting clear indicators, and to require countries to make specific progress within specified periods of time.

The meeting suggested that the FCGH should breakdown “the right to the highest attainable standard of living” so that individuals and communities know exactly what they are entitled to in order to enable them claim for their entitlements.

The concern was that under the current frameworks, individuals and communities have few options when government fails to provide what is needed for health. It was therefore felt that the FCGH should have the force of the law that individuals and groups can sue government in case of non-provision of health goods and services.

**Need to choose a realistic primary goal**

The FCGH concept shows that it will seek health equity and universal healthcare. To some people, this seemed unrealistic, given that efficiency is usually not possible to achieve with universality.

One participant said health systems that have achieved universal coverage have been able to do so at the expense of quality of service, which has nurtured a parallel elite private service and in the process created inequality in health – with those who can afford accessing a better standard of care while the poor settle for low quality care in the public sector. The contributor suggested that the FCGH campaign needs to make a choice of what the primary goal of the framework convention should be. They suggested that it would be more realistic to consider a minimum standard of care rather than health equity as the primary goal.

**Need to take into account unique national circumstances**

Meeting participants emphasized the need for the FCGH to take into consideration the unique circumstances of each country while setting a global framework on the right to health. They noted that they are differences even among least developed countries (LDCs) that may influence the functionality of health systems. As a result, different countries are at different levels of health system development and may for that reason, not benefit from the framework convention equally. It was noted that one of the motivations for the ratification of the FCGH would be for the countries to see the potential of the framework convention to help address some existing challenges.
Participants suggested that the framework convention should not only make it an obligation for countries with resources to support those without, but should also facilitate sharing of best practices and development of effective models that can be adapted by poor performing countries. Further, recipient countries should have the freedom to determine their own priorities and to spend resources received under such a framework without conditionality from donor countries.

**Health care funding**

On health financing, meeting participants suggested that the emergence of non-communicable diseases was posing a threat to the health systems of countries already battered by epidemics of communicable diseases. It was suggested that the FCTC should provide a framework to tax unhealthy lifestyles. It was further suggested that tobacco smokers, alcohol consumers and other people whose behaviors and habits make them a bigger burden for the health system due to the resulting terminal conditions, should bear a bigger share of health care funding. Thus, the FCGH should clarify the concept of equity to ensure those consume more healthcare should pay more.

**Role of local voices**

The meeting noted that the FCGH was unique as it was coming out of advocacy, and the opportunity for local voices across the globe to make an input ahead of the official launch of the campaign. The meeting agreed that by participating in the pre-campaign consultations, they were already playing a role in the FCGH process. The legal experts also felt that, if given the opportunity, they would participate in the drafting process.

**CLOSURE**

The meeting moderator, Ms Juliana Nantaba concluded the meeting by thanking the participants for their interest and insightful criticism that would support the planning of the FCGH campaign. She outlined the emerging issues as: the need for minimum

CEHURD

Center for Health, Human Rights and Development

Plot 833, oLD Kira Road - Ntinda

P.O Box 16617 Wandegeya, Kampala

Telephone: +256 414 532283

Email: info@cehurd.org

www.cehurd.org